

**IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
CENTRAL DIVISION**

TIMOTHY JACOBS,)
Register No. 518347,)
)
)
Plaintiff,)
)
v.) No. 05-4214-CV-C-SOW
)
)
ALFRED GARCIA, et al.,)
)
)
Defendants.)

ORDER

On December 22, 2005, the United States Magistrate Judge recommended that defendants' motions to dismiss for failure to exhaust administrative remedies be granted and plaintiff's claims be dismissed, without prejudice. The Magistrate Judge further recommended that plaintiff's motions for preliminary injunctive relief, hearing and extension of time be denied. The parties were advised they could file written exceptions to the recommendation, pursuant to 28 U.S.C. § 636(b)(1)(C).

The court has conducted a de novo review of the record, including the exceptions filed by plaintiff on January 13, 2006, and defendants' response filed on January 17, 2006. The issues raised in plaintiff's exceptions were adequately addressed in the report and recommendation. The court is persuaded that the recommendation of the Magistrate Judge is correct and should be adopted.

Inmates who file an appeal with the United States Court of Appeals for the Eighth Circuit are required to pay the full \$255.00 appellate filing fee, regardless of the outcome of the appeal. *Henderson v. Norris*, 129 F.3d 481, 484 (8th Cir. 1997). The filing of a notice of appeal is considered a consent by the inmate to allow prison officials to deduct an initial partial appellate filing fee and later installments from the prisoner's account.

IT IS, THEREFORE, ORDERED that defendants' motions to dismiss are granted and plaintiff's claims are dismissed, without prejudice, pursuant to the provisions of 42 U.S.C. § 1997e, for failure to exhaust administrative remedies [20, 31, 37]. It is further

ORDERED that plaintiff's motions for preliminary injunctive relief and for hearing are denied [17, 29, 32].

/s/Scott O. Wright

SCOTT O. WRIGHT

Senior United States District Judge

Dated: 1-23-06